

United States District Court  
For the Northern District of CaliforniaIN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 JUSTO MORALES, ) No. C 10-01199 JW (PR)  
12 Petitioner, ) ORDER TO SHOW CAUSE  
13 vs. )  
14 C. NOLL, Warden, )  
15 Respondent. )  
16 \_\_\_\_\_ )  
17

18 Petitioner, a California prisoner incarcerated at the Salinas Valley State  
19 Prison in Soledad, has filed a pro se petition for a writ of habeas corpus under 28  
20 U.S.C. § 2254, challenging his state conviction. Petitioner has paid the filing fee.

**BACKGROUND**

23 According to the petition, petitioner was found guilty in Monterey County  
24 Superior Court of two counts of second degree murder, two counts of gross  
25 vehicular manslaughter while intoxicated and causing injury, driving with a .08  
26 percent blood-alcohol level and causing injury, and hit-and-run driving with serious  
27 permanent injury. Petitioner was sentenced to 10 years with a consecutive term of  
28 15 years to life in state prison.

1 Petitioner appealed the conviction; the state appellate court affirmed the  
2 conviction and the state high court denied review. (Pet. at 3.) Petitioner also filed  
3 state habeas which were denied. (Pet., Ex. C.) Petitioner filed the instant federal  
4 habeas petition on March 23, 2010.

5  
6 **DISCUSSION**

7 A. Standard of Review

8 This court may entertain a petition for a writ of habeas corpus “in behalf of a  
9 person in custody pursuant to the judgment of a State court only on the ground that  
10 he is in custody in violation of the Constitution or laws or treaties of the United  
11 States.” 28 U.S.C. § 2254(a).

12 It shall “award the writ or issue an order directing the respondent to show  
13 cause why the writ should not be granted, unless it appears from the application that  
14 the applicant or person detained is not entitled thereto.” Id. § 2243.

15 B. Legal Claims

16 Petitioner raises the following grounds for federal habeas relief which he  
17 references in the state appellate court decision in his direct appeal, (Pet. at 6): 1) the  
18 trial court erred in admitting evidence of his prior driving record; 2) the trial court  
19 erroneously instructed the jury on assumption of the risk and misinstructed on the  
20 defense of voluntary intoxication, the knowledge element of hit-and-run driving, and  
21 the required concurrence of act and mental state; 3) the trial court erred in refusing  
22 his instructing defining implied malice; and 4) the trial court erred in imposing an  
23 upper term for driving while intoxicated. (Pet., Ex. A at 2.) Liberally construed,  
24 petitioner’s claims appear cognizable under § 2254 and merit an answer from  
25 respondent.

26  
27 **CONCLUSION**

28 For the foregoing reasons and for good cause shown,

1. The clerk shall serve by certified mail a copy of this order and the

1 petition and all attachments thereto on respondent and respondent's attorney, the  
2 Attorney General of the State of California. The clerk also shall serve a copy of this  
3 order on petitioner.

4 2. Respondent shall file with the court and serve on petitioner, within  
5 **sixty (60) days** of the issuance of this order, an answer conforming in all respects to  
6 Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of  
7 habeas corpus should not be issued. Respondent shall file with the answer and serve  
8 on petitioner a copy of all portions of the state trial record that have been transcribed  
9 previously and that are relevant to a determination of the issues presented by the  
10 petition.

11 If petitioner wishes to respond to the answer, he shall do so by filing a  
12 traverse with the court and serving it on respondent within **thirty (30) days** of his  
13 receipt of the answer.

14 3. Respondent may file a motion to dismiss on procedural grounds in lieu  
15 of an answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules  
16 Governing Section 2254 Cases. If respondent files such a motion, petitioner shall  
17 file with the court and serve on respondent an opposition or statement of non-  
18 opposition within **thirty (30) days** of receipt of the motion, and respondent shall file  
19 with the court and serve on petitioner a reply within **fifteen (15) days** of receipt of  
20 any opposition.

21 4. Petitioner is reminded that all communications with the court must be  
22 served on respondent by mailing a true copy of the document to respondent's  
23 counsel. Petitioner must also keep the court and all parties informed of any change  
24 of address.

25  
26 DATED: November 30, 2010

27  
28   
JAMES WARE  
United States District Judge

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

JUSTO MORALES,  
Petitioner,  
v.  
C. NOLL, Warden,  
Respondent.

Case Number: CV10-01199 JW

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 12/1/2010, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Justo Morales F-31628  
Salinas Valley State Prison  
P. O. Box 1050  
Soledad, CA 93960

Dated: 12/1/2010

Richard W. Wiking, Clerk  
/s/ By: Elizabeth Garcia, Deputy Clerk